

G&R Maple Lawn, Inc. et al.

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Before The Zoning Board of

Petitioners

Howard County

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ZB Case No. 995M

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DECISION AND ORDER

On June 23, September 1, 8, 13, 15, 22, 25, 28 and 29, October 6, 13, 14, 20, 26 and 27, November 3, 10, 17, 23, December 8 21, 1999, January 5, 12, and 19, February 2, 16, and 23, March 8, 22, and 28, and April 5 and 11, 2000, the Zoning Board considered the petition of the G&R Maple Lawn, Inc., et al. for approval of a proposed Preliminary Development Plan ("PDP") and Criteria for a Mixed Use Development (MXD-3) for the RR-MXD-3-zoned subject property, consisting of approximately 507.9 acres located on the west side of U.S. 29 generally north of MD 216 and south of Johns Hopkins Road in the Fifth Election District of Howard County, and identified as Parcels 110, 114, 121, 129, 205, 330, 450, and 474 on Howard County Tax Map 41, and Parcel 124 on Howard County Tax Map 46.

The notice of the hearing was advertised, the subject property was posted, and adjoining property owners were mailed notice of the hearing, as evidenced by the certificates of advertising, posting, and mailing to all adjoining property owners, all of which were made part of the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report ("TSR") of the Department of Planning and Zoning ("DPZ"), and the Planning Board's Recommendation, were made part of the record. Both the DPZ and the Planning Board recommended approval of

the petition.

The Petitioners were represented by Richard B. Talkin, Esquire. Numerous witnesses appearing in opposition to the petition ("Protestants") were represented by spokespersons John Breitenberg, Esquire and Thomas Dernoga, Esquire. In addition, some Protestants appeared in opposition representing themselves.

After careful evaluation of all the information presented, the Zoning Board makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Petitioners requested approval of a Preliminary Development Plan ("PDP") and Criteria for a Mixed-Use Development (MXD-3) for approximately 507.9 acres of land located on the west side of US 29, south of Johns Hopkins Road and north of MD 216, between the intersection of MD 216 and US 29 and the intersection of Johns Hopkins Road and US 29. The original petition included the Petition and PDP Exhibits A through D.

2. Mr. Stewart Greenebaum, Mr. Matt Damico, and Mr. Fred Jarvis provided most of the testimony for the Petitioners as to the issues of the proposed PDP and how it relates to the criteria for decisions on such plans in the Howard County Zoning Regulations ("HCZR"). Their testimony is summarized as follows on the noted general areas relevant to the Petition. When other witnesses' testimony is referred to, it will be so identified. Most of the testimony provided by these witnesses relating to the issue of evaluation of the PDP under the criteria of Section 127 of the HCZR was corroborated by information in the DPZ's TSR or by other testimony presented to the Board in this case. Those facts which the Board finds to be established include the following:

a. The PDP for the subject property provided a specific land use map, other plats, maps and exhibits which fully described the subject property, its location and the project. The Department of Planning and Zoning provided a detailed description of the location and orientation of the various proposed land uses on the original petition on pages 2 through 10 of the May 29, 1998 TSR. The Board accepts these descriptions and adopts them as its own for purposes of this case. The PDP proposed the various land uses in the following proportions:

Single-Family Detached ("SFD") -	182.7 acres	36.0%
Other Residential -	70.3 acres	13.8%
Employment -	77.1 acres	15.2%
Open Space -	177.8 acres	35.0%

The residential units as shown on the PDP were proposed by Petitioner in the following proportions:

Single-Family Detached ("SFD") -	495 units	42.4%
Single-Family Attached ("SFA") -	437 units	37.4%
Apartments ("Apt.") -	236 units	20.2%

b. At work sessions of the Board, the Board requested that Petitioner respond to Board-initiated requests with respect to certain PDP matters that would reduce the number of dwelling units on the 507.9 acre subject property from 1168 to 1116, that would reduce the number of SFD dwelling units from 495 to 485, and that would reduce the number of SFA units from 437 to 395. The Board also requested that the Petitioner include in its PDP 50 Moderate Income Housing Units ("MIHU") for seniors and a revised phasing and staging plan. By its letter of September 25, 2000, the Petitioners indicated that it accepted the dwelling unit reductions,

senior MIHU unit plan, and revised phasing and staging plan as part of its amended PDP, in addition to all of the other proffers and modifications, which will be identified in the Board's conditions of approval, in terms of the Board's approval of the PDP in this case. As a result of the above-mentioned modifications, the revised numbers and percentages of residential units approved as part of the PDP are as follows:

Single-Family Detached ("SFD") -	485 units	43.5%
Single-Family Attached ("SFA") -	395 units	35.4%
Apartments ("Apt.") -	236 units	21.1%

The Board proposed, and the Petitioners accepted these changes based on testimony presented at the hearings in this case, mostly from Protestants, that the Board should reduce the overall density of the project, that the Board should adjust the staging and phasing of the development to better fit the schedule for construction of area roads to be administered at the Comprehensive Sketch Plan, and that the Board should provide for moderate income housing for senior citizens.

All of the testimony and exhibits presented in this case relating to the Petitioners' original PDP, including the TSR, is relevant to the Board's evaluation and decision on the PDP, modified as indicated above, because all of the changes are non-substantive modifications, in that they are less intensive and/or place greater restrictions on the Petitioners than the original PDP. The Board will, in this decision, be evaluating and making findings and conclusions on the PDP, as modified, based on testimony heard throughout the hearing on this matter. All references to "the PDP" hereafter in this decision shall refer to the PDP as modified unless the context indicates otherwise or unless it is otherwise specifically indicated.

c. The Petitioners presented testimony that the entire area zoned with an MXD-3 Overlay zone in the Fulton area was approximately 800 acres, of which about 100 acres was purchased by the Department of Education to house an elementary school and a middle school, both of which have already been built, and a future high school. Approximately 507.9 acres of this MXD land, with underlying RR zoning, which is all of the Petitioners contiguous acreage of MXD-zoned land, has been submitted in this PDP Petition pursuant to Section 127C.2 of the HCZR. The Board finds that the PDP encompasses over 40% of the area of all contiguous MXD-zoned parcels as required by Section 127C.2.a of the HCZR and all of Petitioners' contiguous MXD-zoned land as required by Section 127C.2.b of the HCZR.

d. The proportion of land uses contained in the PDP, as indicated above, are 49.8% Residential, 35% Open Space, and 15.2% Employment. The Board finds that these percentages meet the minimum percentage of gross area of the mixed-use development requirements contained in Section 127C.3 of the HCZR.

e. The Petitioners propose a Focal Point, called a Community Activity Center, on the PDP, located on approximately 25 acres surrounding the Northwest traffic roundabout on Sanner Road. The Focal Point consists of three sections. The easternmost parcel is proposed for Employment uses. Its primary uses could include neighborhood retail and services and restaurants as well as the potential for some office uses, all to be integrated with commons or green space that will coordinate with the other elements of the Focal Point. The southernmost parcel is proposed to accommodate single-family attached homes, again integrating with the balance of the Focal Point. The layout and design of this parcel will respond to both the street and adjacent Open Space network. The northernmost parcel will include the

Recreation/Community Activity Center, a plaza, green space and landscaped areas, and will promote community identification. This center will be used for active indoor and outdoor recreation and will also provide rooms for community functions.

This diverse combination of proposed land uses fully addresses the spirit of the Focal Point as stated in the HCZR. In addition, the substantial Open Space corridor provides the opportunity for an integrated pedestrian pathway system that will serve as a channel from other areas of the development to the Focal Point. Other focal nodes are proposed to occur throughout the community, taking the form of public squares surrounded by homes, parks overlooking the stream corridor, or a gathering space created within an employment area. Over 80% of the housing units are proposed to be located within a 10 minute walk of the Focal Point, with almost 50% being within a five minute walk.

This mix and concentration of uses in a single location will reinforce the Recreation/Community Activity Center as the Focal Point for the general community.

The Recreation/Community Activity Center is centrally located on spine roads and has direct access to the Hammond Branch greenway. Pedestrian trails within Open Space and sidewalks along the roads will provide a pedestrian system linking the various land uses with the Recreation/Community Activity Center. The Focal Point will be created in the first stages of the Phase I development.

An additional retail center is proposed to be located in the Employment Area closer to MD 216, and is intended to serve the subject property and surrounding community.

The Board finds that this proposal meets the requirements of Section 127C.3.c of the HCZR.

f. The Petitioners propose on the original PDP 182.7 acres of SFD Land Use and 70.3 acres of Other Residential Land Use, for a total of 253 acres. 1168 dwelling units were proposed on the approximately 507.9 acre gross area on the original PDP, so that the maximum residential density proposed on the original PDP was 2.3 dwelling units per acre. The density will be further reduced to 1116 dwelling units on the PDP at a density of 2.2 dwelling units per acre. The Board finds that this residential density is less than the maximum provided in Section 127C.6.a. of the HCZR for MXD-3 Districts. Even though this density does not exceed the threshold of 2.3 dwelling units per acre that would require the provision of MIHU pursuant to Section 127C.6.b of the HCZR, Petitioners proposed provision of 50 MIHU to which will be added the provision of 50 MIHU for senior citizens as referred to elsewhere in this decision.

In addition, Petitioners propose on the PDP that the residential densities for any given parcel of single-family detached use will begin at less than 2 units per acre and go up from there and that, while individual parcels may have higher or lower density, the average single-family detached density is approximately 2.8 dwelling units per acre, and that parcels recorded on the Other Residential land use area will range in density from 5 to 20 dwelling units per acre.

The number of Apartments proposed on the PDP, 236, is 21% of all dwelling units, below the 30% maximum of the total number of dwelling units proposed on the PDP, and is in compliance with Section 127C.6.c of the HCZR.

g. The Petitioners propose a maximum Floor Area Ratio ("FAR") of 0.35 for the 77.1 acres of Employment proposed on the PDP. This equates to a proposed maximum commercial floor area of 1,175,460 square feet covering all Employment land use area. This

proposed FAR does not exceed the maximum FAR permitted under Section 127C.7.a of the HCZR. The FAR of 0.35 gives the development the opportunity to prevent sprawl and have buildings within walking distance of each other and the restaurants and facilities that serve them.

Sections 127C.7.b., c., and d. of the HCZR permit a maximum floor area of 152,370 square feet for retail and personal service uses in all retail centers, based on a 300 square feet per gross acre computation, and a maximum 15% of Employment land use for warehouses and light manufacturing multiplied by a 0.35 FAR for any individual parcel. In its PDP, Petitioners propose 152,370 square feet of retail in the Retail Centers with a maximum of 100,000 square feet in any one Retail Center, and with no individual retail establishment having a gross floor area greater than 65,000 square feet. Petitioners proposed no warehouse or light manufacturing uses at this time, and such future use would not be permitted to exceed the maximum permitted.

Petitioners' testimony as to its proposed location, mix and amount of Employment uses over the build-out of this project, based on market conditions and demand outlined the potential benefits of these uses, and these proposals meet the requirements of Sections 127C.7.b., c., and d. of the HCZR.

The uses proposed to be permitted as a matter of right in the Employment land use areas in the PDP Criteria include all permitted uses as a matter of right in the POR, B-1, and M-1 Zoning Districts, and all other uses permitted by Section 127C.4.b of the HCZR, provided that the uses permitted are further restricted as provided on Petitioners' Exhibit 78. The Board finds that the above permitted uses, as limited, results in the type and mix of uses that is appropriate for this MXD development.

The Petitioners presented evidence estimating that two full time jobs would be produced for each 1,000 square feet of floor area of retail uses, and four full time jobs would be produced for each 1,000 square feet of floor area in other Employment uses. Based on the maximums permitted under the proposed Employment uses on the PDP, those estimates would yield approximately 4300 jobs produced by the PDP development.

The Retail Centers and Employment land use areas will be within walking distance of most residential areas of the project.

The Petitioners propose accessory uses on the PDP in accordance with Section 127C.5. of the HCZR.

h. The Petitioners propose 177.8 acres of Open Space land use area on the PDP, designed in a network of both passive and active recreation that link together all the other land use areas. The PDP provides for an integrated plan in which open space connects with other land uses both physically and visually. Open space locations are placed so that their use can be maximized. The major Open Space land use areas have been located near the schools and Focal Point, with the major Open Space land use area in the Old Farm District located so that people from the greater community can share these areas without the necessity of traveling through the project. Roadways have been designed to be single loaded in appropriate areas in order to provide views of open space. Open space areas are proposed for connection via pedestrian paths to the sidewalk network along the streets and are adjoined by mid-block passages so that green spaces are accessible by sidewalk. These areas, in turn, are proposed to be connected to pedestrian and bicycle trails that traverse the wooded areas of the site and along the Hammond Branch. Finally, connections will be made to adjoining open space and the school sites.

The Petitioners have proposed open space buffers of 50 feet, as shown on the PDP, providing significant space to physically buffer adjacent residential development, with extensive landscape additions to those buffers. These buffers will function as an open space extension of Maple Lawn lots and will separate adjacent residential uses. Berms with screen plantings will supplement, where appropriate, any natural topographic or vegetated border with the existing residential neighborhoods. These landscape design standards required to be provided for the edges of the property are contained in Petitioners' Exhibit 35. These standards require the use of 12 to 14 foot high evergreen trees, or berming with various trees and shrubs, for buffers in areas where there is no existing forested buffer.

The Petitioners propose the creation or preservation of additional Open Space land use on the PDP in the following areas to provide appropriate connections or transitions: (i) Along Johns Hopkins Road north of the Midtown Neighborhood; (ii) A 50 foot open space buffer beginning along the western edge of the Midtown Neighborhood and extending along the entire northern and western boundaries of the Garden District; (iii) At the potential entrances to adjacent neighborhoods at Flamewood and Oakcrest Roads; (iv) Around the Old Farm District; (v) Along US 29 to the east of Old Columbia Pike; (vi) 20 acres of wooded open space to the east of the Workplace District.

Zoning Board Exhibit 1 sets forth the approximate size, location and use of open space, showing more than 20% of the open space to be active Open Space land use, exceeding the 10% active Open Space land use requirement of Section 127C.3.e of the HCZR.

The major natural feature of the site is the Hammond Branch Stream Corridor bisecting the site from west to east. Petitioners propose to protect this area as Open Space land

use and enhance it as a reforestation area as well as a pedestrian link throughout the community. The PDP shows additional natural areas leading to the Hammond Branch helping to separate internal parcels. These areas will also be protected as open space. The other natural features on the boundary of the PDP that will be protected and enhanced will include the following forested areas: (i) Along the eastern boundary of the PDP adjacent to US 29 near the Hillside Neighborhood and extending to the south along the eastern edge of the Workplace District; (ii) Along the PEPCO right-of-way; (iii) Along the eastern edge of the Midtown Neighborhood adjacent to the Westvaco property; (iv) Along the northwest corner of the Midtown Neighborhood adjacent to Johns Hopkins Road; (v) Along the north side of the Hillside Neighborhood. The Petitioners have proposed, as part of the PDP, to retain most of the forested area of the site and to conduct reforestation of natural areas.

The Petitioners propose on the PDP that Open Space land use be designed to incorporate many of the environmentally sensitive features on the subject property, including forest stands, stream valleys, and wetlands. In addition, the PDP provides opportunities to link the open space network on the subject property with open space on adjacent properties. The Petitioners have also proposed a pedestrian pathway system on the PDP that coordinates and relates to the Open Space land use areas, sidewalks, and other land use areas, particularly the Focal Point.

The Petitioners propose that the permitted uses in the Open Space land use areas as shown on the PDP shall be ones that do not involve extensive coverage of land with structures, including but not limited to parks, playing fields, tennis, basketball and all purpose courts, pools, pathways, and other outdoor recreational uses, in addition to environmental

facilities such as storm water management facilities or water quality facilities. The PDP also proposes that buildings and associated parking lots are also permitted uses in the Open Space land use areas if they are proposed for the public or for people working within the subject property and are owned by a homeowner's association or are for non-profit uses. The PDP likewise provides that open land within designated residential land use areas shall be considered Open Space if it is held for the common use of persons residing in the vicinity of such land.

The Board finds that the open space network proposed on the PDP connects to existing and planned open space adjoining the PDP, including the adjoining school site. It also finds that major environmental features are protected on the PDP, principally through the location of the 177 acres of Open Space land use on the PDP so as to incorporate almost all of those environmental features. The Board finds that the 35% of the PDP devoted to Open Space land uses will provide adequate useable land for the location of parks and recreational facilities and that at least 10% of the gross Open Space areas will be useable for active recreation facilities. The actual location of those parks and facilities is intended to be accomplished at the Comprehensive Sketch Plan ("CSP") stage of the MXD development. The Board also finds that the 177 acres of Open Space land use on the PDP provides enough land for any needed public facilities, the details of which are appropriately addressed at the CSP stage.

i. The subject property is currently buffered by major roads: US 29 to the east, Johns Hopkins Road to the north, and Route 216 to the south. These major thoroughfares provide a significant amount of separation between on-site and off-site uses.

The overall design of the PDP includes development areas defined by the roadway and open space systems, the Focal Point and Employment areas, enabling individual

identification for each residential community. The Petitioners have proposed the location of neighborhood parks and open space, with development surrounding those parks. The Petitioners have generally located Open Space or Single-Family Detached land use areas at the periphery of the site, except for the Employment land use areas, in order to provide maximum compatibility with adjoining land uses.

The Petitioners have established the following setback requirements and standards for the PDP: (i) At Johns Hopkins Road there will be no backs of houses facing roads; the setback is approximately 100 feet for residential units; (ii) At Johns Hopkins Road, there will be no backs of buildings or parking for commercial uses across from the Applied Physics Laboratory ("APL"); setbacks will be approximately 50 feet; (iii) In the Old Farm District, homes are nearly 300 feet from MD 216; (iv) In the Workplace District, buildings are nearly 300 feet from MD 216; (v) Landscape standards apply in setback areas.

The Petitioners propose on the PDP the following height limits, setbacks and lot sizes : (i) At Johns Hopkins Road (a) Commercial buildings at the corner will be no more than 3 stories; (b) East of Sanner Road, in the Focal Point, commercial buildings will be no more than 4 stories; (c) Residential buildings to be consistent with the north side of Hopkins Road and adjacent properties, that is 2-3 stories for residential uses; (ii) At MD 216 in the Workplace District, the first buildings along Sanner Road, within approximately 500 feet, will be no more than 4 stories, with buildings beyond that being permitted 8 stories towards the center of the site; (iii) Although there is no similar height restriction in the neighboring Westvaco or APL facilities that are in the PEC Zoning District, employment buildings at the edge of the project would not exceed 4 stories in height, which is consistent with the PEC zoning of the APL, Westvaco and

Montpelier properties, the latter of which includes the Bell Atlantic building; (iv) Residential lots adjacent to the existing Flamewood neighborhood will be at least 20,000 square foot lots, and the lot widths will be similar to adjacent lots in the neighboring subdivisions and will provide the opportunity for similar or larger sized housing.

j. The existing vehicular circulation system serving the subject property includes Johns Hopkins Road bordering the northern portion of the site. Johns Hopkins Road ends at US 29 with Gorman Road continuing to the east. Bordering a portion of the subject property and to the east is US 29. Bordering the southern boundary of the subject property is MD 216-Scaggsville Road. Approximately one-half mile to the west of the subject property, Pindell School Road joins MD 216 with Johns Hopkins Road. To the north of the subject property and directly west of Johns Hopkins APL lies Sanner Road, a north/south oriented road that currently "T's" into Johns Hopkins Road.

Sanner Road is designated on the 1990 General Plan to be a Minor Arterial connecting from its current intersection with Johns Hopkins Road through the subject property and other land to MD 216. The PDP shows Sanner Road extended as a continuous through movement to MD 216. A series of roads connect with Sanner Road to serve the subject property. Because the General Plan shows Sanner Road extending through the Oliver property, the Petitioners included that extension in its PDP. However, the Board notes that the location of that portion of Sanner Road will be determined by the County, and the Petitioners will cooperate with the County if it requires the moving of the location of Sanner Road in the development process.

There are three proposed connections from the subject property to Johns Hopkins Road and two proposed connections to MD 216 as shown on the PDP. No access to existing

surrounding residential streets stubbing to the subject property is shown on the PDP.

Proposed improvements to the Johns Hopkins/US 29 intersection and to MD 216 between US 29 and US 95 are to be constructed by the State, and the State's interchange improvements to the MD 216/US 29 intersection are currently under construction.

k. There are about 180 acres of single-family detached dwelling units in the Old Farm and Garden Districts. A transition of densities has been provided from west to east.

The Petitioners have proposed residential development adjacent to the Price property and employment uses next to Westvaco on the PDP. The Petitioners have also created multiple options for connection with and relation to the Wessel property if and when it develops.

The land uses and zoning categories surrounding the Fulton MXD District include residential and employment zones. The surrounding residential development has been developed over time at a density, an average of one dwelling unit per 1.3 acres, greater than the density currently permitted for development according to the RR Zoning District, the underlying zoning district for the subject property and the surrounding area, which is one dwelling unit per 4.25 acres.

The surrounding employment zones are the B-2, B-1 and PEC Zoning Districts. The DPZ TSR accurately reflects the nature of the MXD Zone and the relationship of this particular PDP with its surrounding area. Mixed-use developments are intended to include "a diversity of housing types at medium to high densities" according to the Purpose Section of the MXD Zoning Regulations.

A transition in land uses has been provided on the PDP. Along Johns Hopkins Road, residential uses have been placed across from existing residential uses and commercial

uses have been placed across from existing commercial uses. In the western part of the PDP, large lot single-family detached uses abut adjacent existing single-family detached neighborhoods separated by a 50 foot open space buffer with landscaping. Along MD 216 in the Old Farm District, significant open space has been provided and residential use has been placed across from existing residential uses. In the Workplace District at MD 216, commercial uses have been placed across from the Park and Ride.

1. The Petitioners presented testimony through Mr. Carl Gutschick, its engineering consultant, that the subject property is located in the Planned Service Area for Public Water and Sewerage, and that public water and sewer lines are adjoining and available to the subject property. Mr. Gutschick noted that public water and sewerage facilities in Howard County were planned to include the subject project and are adequate.

3. Some of the testimony in these hearings relating to the petition's meeting the criteria contained in Section 127D.7 of the HCZR was disputed, including testimony related to compatibility, open space, phasing and staging and other traffic and road issues, public transit facilities, and integration of uses and related project design issues. The testimony given on behalf of the Petitioners on phasing and related traffic and road issues was presented by Petitioners' traffic consultants, Mr. Wes Guckert and Mr. Edward Papazian and is summarized below:

a. The plan provided for two phases. In phase I, 534 dwelling units and 176,000 square feet of employment-commercial development would be allowed to occur. Phase II would not be allowed to begin until the interchanges at US29/Hopkins Road and US 29/MD 216 were constructed. The staging plan provided that the maximum number of dwelling units for any year

would be 150, with unused allocations to gather for use in subsequent years. This phasing plan had been scheduled to coincide with the planned improvements set forth in Chapter Eight of the 1990 General Plan.

b. Mr. Papazian testified as to the traffic issues regarding MXD District criteria. Mr. Papazian maintained that the traffic study intended by the HCZR to be conducted at the PDP stage of the MXD development was a "generalized traffic analysis", pursuant to Section 127D.3 of the HCZR, and that his analysis went beyond those requirements, and used APFO type procedures, including the study of and proposed improvement of roads that would not be required under APFO, as part of its phasing plan proposed to meet the criteria of Section 127D.7.b. of the HCZR. Mr. Papazian stated that the actual, detailed traffic analysis, using Design Manual standards, is intended by the MXD Regulations to be conducted at the next stage of review in the MXD District, the CSP stage of the approval process outlined in Sections 127E.1.g. and 127E.3.c. of the HCZR. The proposed development considered in this case is still required to meet the applicable requirements of the APFO as provided in Section 127E.2.g. of the HCZR.

c. Mr. Papazian's development assumptions in his traffic evaluation included

- 1168 residential units in the amounts provided in finding of fact 2
- 1,023,090 square feet of office space
- 152,370 square feet of retail space
- Development to commence in 2000
- Development to occur over a 10 year period

d. Mr. Papazian's traffic study assumptions included the following:

- Approved developments in the study area
- Pending developments in the study area (although not required by APFO requirements)
- Background traffic growth for the peak hour period studied was set at 3% per year on US 29 and 2% per year on other roadways
- The Critical Lane Analysis was based on traffic counts and discussions with Howard County traffic officials
- The trip generation rates used were those called for by the Institute of Traffic Engineers (ITE), with a reduction for mixed-use development of 5% of retail trips in Phase I and 10% for retail and residential trips for the PDP

e. Mr. Papazian testified that the Traffic Study was performed in accordance with the purposes of the APFO test. This requirement, along with a study of additional intersections requested by the DPZ in excess of the APFO requirement, yielded a traffic study project impact area for the subject property's development to include 13 intersections: MD 108/Guilford Road, Hall Shop Road/Guilford Road, Pindell School Road/Sanner Road, Browns Bridge Road/Hall Shop Road, Hall Shop Road/Simpson Road, Pindell School Road/Johns Hopkins Road, Sanner Road/Johns Hopkins Road, US 29/Johns Hopkins Road, MD 216/MD 108, Browns Bridge Road/MD 216, Pindell School Road/MD 216, Sanner Road/MD 216, and US 29/MD 216.

f. Mr. Papazian testified that the following road improvements were assumed to be made for Phase I as part of the traffic study:

1. US 29 and Johns Hopkins Road - a second left turn lane from Johns Hopkins Road onto Northbound US 29; and
2. MD 216 and US 29 - a second left turn lane along both eastbound and westbound MD 216.

g. Mr. Papazian's conclusions in his traffic study, based on the above-stated

assumptions, were that:

1. For the initial phase of development, with the exception of the US 29 intersections with MD 216 and with Johns Hopkins Road, the intersections will operate at levels of service ranging from A to C. The intersections of US 29 with MD 216 and with Johns Hopkins Road, while operating at level of service of F with the recommended improvements in place, will have lower critical lane volumes with the development and proposed improvements, when compared with background traffic volumes. Traffic conditions would be better with the proposed development and road improvements than they would be without the development's traffic and improvements.

2. For the PDP (Phase I and Phase II), all intersections will operate at acceptable levels of service.

3. The proposed development can be accommodated on the area roadway system, and the initial phase of development can occur prior to the construction of the interchanges of US 29 with MD 216 and with Johns Hopkins Road with at-grade intersection improvements being implemented at these locations that would mitigate the impact of the initial phase of development.

- h. Petitioners' traffic study did not include an analysis of the MD 216 link between US 29 and US 95. The Protestants', through their consultant Mr. Cunningham, provided testimony with respect to the capacity of that link to accommodate projected traffic conditions on that link from the project, and the Petitioners responded to that testimony. The Board also requested information from the Maryland Department of Transportation and received a letter from that agency dated April 11, 2000, which is the Board's Exhibit Exhibit 5. Based on

the information in that letter and the other testimony, the Board requested that Petitioners revise its Phasing and Staging Plan. Petitioners, in response to that Board request, submitted the revised Phasing and Staging Plan on September 25, 2000 and indicated that it accepted that revised plan as a condition of approval. The Board finds that the revised Phasing and Staging Plan is an acceptable plan, and takes into consideration the projected dates for roadway improvements and for development of the project to extend to 2015.

i. Petitioners have proposed, as a PDP commitment, to implement a Traffic Demand Management Plan ("TDMP"), containing a variety of methods and programs designed to reduce vehicle miles traveled on local roadways. The TDMP calls for an assessment of 10 cents per year on each square foot of commercial and office space uses in the project along with contributions from the Master Homeowners Association. This money will be used to fund the management plan, which may reduce the use of individual automobiles and may reduce vehicle miles traveled and road congestion. The TDMP will encourage carpooling and is designed to reduce peak hour vehicle trips.

4. The testimony presented by the Protestants on phasing and related traffic and road issues is based on the Petitioners' original 1998 traffic study and subsequent exhibits submitted by both the Petitioners and Protestants, and their respective traffic consultants. After reviewing these documents, the Board asked the Petitioners to address several phasing and staging issues, including revising the phasing and staging plan to have proposed development to begin at a later date and extend over a longer period of time than in the original phasing and staging plan, with a reduced number of dwelling units per year below the 150 per year originally proposed by the Petitioners. The Board makes the following findings as to phasing and staging and the related

issues of traffic and roads:

a. The Board finds that the most appropriate phasing requirements to apply to the PDP, in order to meet the intent of Section 127D.7.b. of the HCZR, commonly referred to as the MXD phasing requirements, are those addressed by the Petitioners in the September 25, 2000 letter to the Board, the revised Phasing Plan.

The Board finds that the criteria of Section 127D.7.b of the HCZR is based on the submission requirements of Section 127D.3.c of the HCZR, which refers to submission of a "generalized traffic analysis for the MXD in relation to major road improvements proposed in the General Plan, and a plan . . . in relation to the road improvements." A traffic impact analysis, prepared in accordance with the Howard County Design Manual and an actual phasing plan are not required to be submitted to the Planning Board until the CSP stage of a MXD development pursuant to Section 127E.2.g of the HCZR. The Petitioners, through its submission of its phasing plan, and by its acceptance of the revised Phasing Plan, and detailing the assumed development and intersection improvements according to Design Manual/APFO standards, and the proposed amount of traffic to be permitted under the plan based on those assumptions, has presented a more detailed traffic analysis than is required at the PDP stage of development under the MXD Regulations. The Board finds that, under the applicable standard, the Petitioners have presented sufficient documentation that the development proposed under the PDP will conform to the corresponding phasing of road improvements pursuant to Section 127D.7.b of the HCZR, provided that the Petitioners comply with the Revised phasing and staging plan as detailed in the Petitioners' September 25, 2000 letter to the Board.

b. Inherent and contained in the Board's general phasing finding are several other

more specific findings relating to phasing. First, the Board finds that it is appropriate to use the standard ITE trip generation rates in the general traffic analysis at this stage of the MXD process, especially given the evidence that those rates are applied by the County in the APFO process.

c. The Board's findings on the phasing plan are made with cognizance of the Protestants' concerns regarding the impact of the development on local roads and the MD 216 link. However, the Board finds that these concerns are alleviated by Petitioners acceptance of and commitment to the Revised Phasing and Staging Plan, and also by the fact that the Petitioners will have to meet the traffic/phasing tests in the CSP and APFO approval processes. The criteria for CSP approval require that the phasing of development is consistent with the phasing schedule in the PDP and the schedule for the opening of the General Plan road improvements needed to serve the development. The Board finds that the US 29/MD 216 and US 29/Hopkins Road intersection improvements and the MD 216 Link improvements between US 29 and US 95 are General Plan road improvements needed for the first phase of the development for purposes of Sections 127D.7.b. and 127E.4.c. of the HCZR. The Board notes that the two US 29 intersection improvements have been funded for construction and will take and pass the CSP funding test. The MD 216 link was not funded for construction as of April, 2000 but the Board finds that the funding of this link is needed and this funding test must be passed or deemed passed three years before the first year of the phasing plan. In implementing this requirement, the Planning Board may not approve a CSP unless the General Plan road improvements needed for the development are funded for construction in the then current Maryland Consolidated Transportation Program prior to the acceptance for processing by DPZ of the Preliminary Plan of subdivision for that stage for which the roads are needed. For purposes of evaluating this road test, the Planning Board shall

only consider the approved current year construction funding; out year construction funding in the CTP has no bearing on this test. The subdivision is required to take and pass a construction funding test in order for MXD development approved by this PDP to proceed at the CSP stage; the subdivision may take and fail this construction funding four times before it is allowed to proceed if funding is still not provided. The Board finds that the PDP and CSP approval process, working together, are designed to ensure, consonant with the State's implementation of its planned construction of State roads, that MXD development will be phased to conform to the phasing of road improvements specified in Chapter Eight of the General Plan that are needed to serve the development.

d. The Board finds and concludes that development must be in accordance with Section 127E.4.c(2) HCZR.

5. The testimony and evidence presented by the Petitioners and Protestants on the staging issues, together with the Board's findings on that issue, are summarized as follows:

a. The Petitioners testified that the Staging Plan proposed as part of the original PDP called for 1168 dwelling units to be developed at no more than 150 dwelling units per year. The original PDP also provided that no more than 50% of the acreage requested for residential use would be recorded prior to commencing plat recordation of Employment areas. The Petitioners revised the PDP to provide that no more 35% of residential areas would be recorded prior to commencing plat recordation for Employment areas. As stated above, the Petitioners also committed to the development of the Focal Point as part of its initial phase, as soon as permitted in the Revised Staging and Phasing Plan. This proposed staging plan exceeds the more indefinite staging requirements of Section 127C.3.c of the HCZR. The Petitioners accepted as part of the

Revised Phasing and Staging Plan that the maximum number of residential units per year would be 120 for years 2005 through 2008, and that the maximum number of dwelling units for years 2009 through 2011 would be 100, for years 2012 and 2013 would be 75, for year 2014 would be 45, and year 2015 would be 41. The Petitioners proposed that any unused allocation of the maximum number of dwelling units permitted per year would be permitted to gather for use in subsequent years. The Board finds that this process to be reasonable, and further finds that it would be appropriate, to encourage the early provision of the MIHU in the development of the PDP, to exempt the MIHU from the per year dwelling unit allocation requirement, as set forth in the Revised Phasing and Staging Plan.

b. Testimony concerning more detailed location of units by unit types, and that would specify certain requirements as to integration and/or mixing of uses in the same structure are laudable objectives, however, the Board finds that the PDP stage of the MXD development process is premature for imposing such requirements. The Planning Board, in the CSP process, may be amenable to the imposition of such requirements in order to provide a greater integration of uses. The Board does find that the Revised Staging Plan does establish the earliest reasonable time for development of the primary Focal Point and the mix of uses proposed on the PDP.

6. The Protestants raised several other concerns on a variety of issues relating to the PDP, concerns summarized below with Board findings:

a. Various Protestants called for a reduction in the number of dwelling units to be approved on the PDP, some as low as 750, with Protestants' planning consultant, Mr. DiAiso calling for a reduction to 1.98 dwelling units per acre. The Protestants testified that compatibility of the project with existing development on vicinal properties required the development approved

in the project to be only single-family detached development or at least to include a significant reduction in the number of apartments and townhouses, because the existing RR development in the surrounding area consisted entirely of single-family detached dwelling units.

The Protestants also testified that the minimum lot size of the dwelling units on the PDP should be increased to be the same as or similar to the surrounding average lot size of 1 dwelling unit per 1.3 acres (or .75 dwelling units per acre) in order to ensure compatibility with existing vicinal development.

The Board cannot accept the Protestants' interpretation of the compatibility requirements in the HCZR in its application of this case. The Board recognizes that the decision to put an MXD District on the Howard County Zoning Map at this location has already been made. The MXD Regulations contemplate a maximum density of 3 dwelling units per acre for this MXD District, and implicitly recognize the desirability of a residential density of at least 2.3 dwelling units per acre in this MXD District by tying the important goal of provision of moderate income housing to that level of density in the MXD District.

The Board notes that if the governing body had intended that compatibility of MXD development with existing vicinal development required the development of only the same housing types at the same density as the surrounding development, the MXD Regulations would have so required, and they did not.

The Board also finds that the PDP development must be compatible with the character of planned development in the vicinity as well. On the original PDP, the Petitioners proposed 1168 dwelling units on approximately 507.9 acres, at a density of 2.3 dwelling units per gross acre. The revised PDP would permit the development of 1116 dwelling units on 507.9 acres

at a density of 2.2 dwelling units per acre.

As required by Section 127D.3.d of the HCZR, the Petitioners proposed a conceptual land use master plan (referred to in the hearings and hereafter as the "Bubble Plan") for the adjoining MXD-zoned properties not included in the PDP petition, the Price and Wessel properties. The Petitioners showed the proposed development on the 67 acre Price property and the 110 acre Wessel property to be a total of 581 dwelling units (71 SFD and 510 Other Residential) on 177 acres at a density of 3.28 dwelling units per gross acre.

With the development shown on the Bubble Plan, the Petitioners showed 1749 dwelling units on 684.9 acres (the Petitioners actually showed 1749 dwelling units on 783.9 acres, including the School property, but the DPZ in its TSR correctly disallowed including the School property in the density computation since it could not be developed as an MXD property) over the entire MXD District for a density of 2.55 dwelling units per acre. Under the revised PDP, with the Bubble Plan proposal for the Price and Wessel properties, there would be 1697 dwelling units on 684.9 acres over the entire MXD District at a density of 2.47 dwelling units per acre.

The Board finds that the Petitioners' Bubble Plan for the Price and Wessel properties, which "is not binding on other property owners, but is intended to provide both a probable context for evaluating the initial petition and direction for future petitions", does not represent the probable future development of the Price and Wessel properties for purposes of evaluating the Petitioners' MXD's compatibility with planned vicinal uses.

The Board notes that the proposed Bubble Plan development of the Price and Wessel properties, at 3.28 dwelling units per gross acre, would not be permitted under Section 127C.3. of the HCZR if the Price and Wessel properties were petitioned as a separate MXD

development. In any case, the Board finds that this proposed density would be too high for this MXD District, in relation to the subject property's MXD, even if it were permitted to be proposed as an amendment to the subject property's PDP.

The Board finds that the more appropriate and likely future land use of the Price and Wessel properties would include no residential uses at all on the Price property, based on the proximity of the Westvaco facilities and the commercial facilities approved on the subject property's PDP, and residential development on the Wessel property not to exceed 2.2 dwelling units per acre, reflecting the overall density of the revised PDP. (The Board recognizes that not providing any residential development on the Price property would, under Section 127C.3. of the current HCZR, require that the Price property be petitioned as an amendment to the subject property's PDP rather than being petitioned as a separate PDP.)

Under the above-stated, more likely and appropriate land-use assumptions, the total number of dwelling units to be developed over the entire 684.9 acre MXD District would be 1358 units, producing a density of 1.98 dwelling units per gross acre.

The Board finds that under these development assumptions, which the Board finds to be probable and reasonably used for purposes of evaluating the criteria for this Petition, the proposed density of 2.2 dwelling units per gross acre for the subject property's PDP, is compatible with the existing and planned vicinal land uses, particularly when the Board finds that it is probable that the overall density of the MXD District will be 1.98 dwelling units per acre. The Board notes that this is the same density recommended by the Protestants' planning consultant for the subject property's PDP.

The Board makes these findings on compatibility, recognizing that the surrounding

non-MXD residential development has been developed at a density of approximately .75 dwelling units per acre, about three times less dense than the subject property's proposed MXD development at 2.2 dwelling units per acre. The Board notes that the maximum density permitted in the MXD District, 3 dwelling units per gross acre, is about four times more dense than the density of the surrounding non-MXD residential development, while the Protestants' proposal for a maximum density of 1.5 dwelling units per gross acre for the subject property, is about two times as dense as the density of that surrounding development. The density proposed on the revised PDP, 2.2 dwelling units per gross acre, is almost the mid-point between the maximum density under the MXD Regulations and the maximum density proposed by the Protestants. Moreover, the probable overall density of the entire MXD District, at about 1.98 dwelling units per gross acre, is substantially closer to the Protestants' desired density than the maximum density permitted under the MXD Regulations. The 2.2 dwelling units per gross acre density for the subject property's PDP, and the probable overall 1.98 dwelling units per gross acre density of the entire MXD District, therefore, represent a reasonable compromise in achieving an appropriate density to be compatible with the existing and planned development in the vicinity of the site.

The Protestants also requested an increase in the area of Employment land use areas and a lowering of the FAR. The Board finds that these modifications would only result in the spreading out of commercial development over a larger area of the subject property. This would likely harm the synergy of the mix of uses achieved on the revised PDP, and would perhaps adversely affect the very desirability and viability of the proposed MXD development. Moreover, increasing the commercial nature of the MXD development of the subject property would make any such development less, not more compatible, with the largely residential surrounding area.

b. Some Protestants also called for the moving of the Focal Point. The Board finds that located chosen by the Petitioners for the Focal Point on the PDP is an appropriate location.

c. The Protestants expressed the position that public transportation should serve the project. The Petitioners testified that the Park and Ride on MD 216 directly across from the subject property would serve people living and working at the project and that the area is now served by Eyre Bus Company, which has at this time over 16 trips per day each way to and from the Fulton Park and Ride. The Petitioners committed that it would provide bus stops within the project that can serve Eyre or Howard Area Transit Service ("HATS") if it expands to serve the Fulton area. The record indicates that HATS has indicated that the project may present an opportunity for such an expansion. The Board recognizes that it is unlikely that rail service would occur in this area in the foreseeable future, and the Board does not expect such. Therefore, the Board finds that the project has access to public transit despite the probable lack of access to rail service.

d. The Petitioners and DPZ each presented a fiscal impact statement. Both statements showed a clear positive fiscal impact for the County based on the development proposed on the PDP. Protestants also offered testimony with respect to these studies/statements and the fiscal impact, challenging the degree of positive impact based on various alternative assumptions. However, the evidence presented by Protestants did not show that there would not be a positive fiscal impact based on Protestants' worst case scenario of development according to the PDP. The Board recognizes that different MXD projects may have different fiscal impacts based upon location and mix of uses, and that not all MXD fiscal impacts would be the same. In this case, the

Board accepts the analysis of the County, and that of the Petitioners, and finds that the proposed development according to the revised PDP will foster a positive and appropriate fiscal impact.

e. While acknowledging that the Petitioners' proposal met the minimum requirements for provision of open space area and useable active recreation open space area, the Protestants indicated that the Petitioners should have to exceed those minimum requirements, especially for active recreation uses, due to the relative scarcity of active recreation facilities in this particular area. The Board finds however, that the appropriate stage for County open space needs to be identified and applied is at the CSP stage, not the PDP stage of development in the MXD District. Moreover, the Board notes that the requirements of Section 127D.7.f. of the HCZR apply to the appropriateness of the proportions of residential, employment and open space uses to the surrounding area, and do not apply the appropriateness of the percentage of active recreation areas to the surrounding area. The Board finds that the MXD requirements relating to the amount and percentage of active recreation areas are based on the active recreation needs of the MXD development, not the greater needs of the County. Satisfaction of any greater County needs for active recreation area may, as stated above, be addressed at the CSP stage of development.

7. The Board finds that the Petitioners have established that its PDP and Criteria, with the included conditions, commitments, revisions, and assumptions noted and provided in the petition and hearings by the Petitioners and by the Board in this decision, will satisfy all of the criteria of Section 127D.7 of the HCZR, and the Board makes the following findings of fact, in addition to those findings previously made in this decision, as to the criteria of Section 127D.7. of the HCZR:

a. The plan and criteria will foster orderly growth, integration of uses, appropriate

fiscal impact, and development consistent with the purposes of the MXD District, pursuant to Section 127D.7.a., for all the reasons specified in the other specific findings and finding 6.d.;

b. The revised Phasing Plan accepted by Petitioners as proposed in finding 3 will, pursuant to Section 127D.7.b of the HCZR, meet the phasing requirements of Section 127D.7.b. of the HCZR based on the Board's findings 2 through 6;

c. The revised Staging Plan accepted by the Petitioners as proposed in findings 4 and 5, will, pursuant to Section 127D.7.c of the HCZR, establish the earliest reasonable time frame for development of the Focal Point and the proportionate mix of land uses proposed on the PDP for the reasons stated in findings 2 through 6 and elsewhere herein;

d. The plan and criteria on the PDP are consistent with all applicable environmental policies and requirements pursuant to Section 127D.7.d of the HCZR based on finding 2.h and 2.i., and based on the Board's finding that the environmental features are almost entirely located within the 177 acres of Open Space land use provided on the PDP. The Board finds that the interior road alignment is designed to avoid multiple crossings of the PEPCO power line and stream crossings and that this is consistent with environmental policies;

e. The minimum area, proportion of uses and the density or intensity of development will be consistent with the requirements of Section 127C pursuant to Section 127D.7.e. of the HCZR based on finding 2. The Board also finds that the Petitioners originally proposed a PDP that had more residential dwellings and less moderate income housing units than that proposed by the Board and accepted by Petitioners based on Board-generated proposed modifications to the PDP, which in turn, were based on Protestant-expressed concerns for less intense residential development and desire for additional moderate income housing for seniors.

The Board also finds that the PDP meets all the minimum requirements of Section 127C of the HCZR, and in making this finding accepts and adopts the DPZ's evaluation of the petition according to Section 127C of the HCZR in addition to its own findings in making the findings and conclusions contained herein with respect to the criteria of Sections 127C and D of the HCZR.

f. The relative proportions of residential, employment, and open space uses will be appropriate to the area surrounding the MXD District pursuant to Section 127D.7.f. of the HCZR based on findings 2 and 6.e.

g. The development proposed on the PDP pursuant to Section 127D.7.g of the HCZR will include at least one integrated Focal Point of sufficient size and variety of land uses to be a distinct focus for the community based on findings 2.e and 6.b. The Board finds that the provision of additional areas of focus in residential areas and the Retail Center, and the provision of sidewalks and pathways, provides the community focus for that community.

h. The location of land designated on the PDP for retail centers pursuant to Section 127D.7.h. of the HCZR is appropriate for retail and personal services uses which will serve the local neighborhood or community based on finding 2 and 6.b. The Board also finds that the proposed size of the retail area is permitted under the HCZR for retail uses and that the Retail Center location closest to MD 216 is appropriate and that the additional retail uses as part of the Focal Point is also appropriate.

i. The PDP, pursuant to Section 127D.7.i of the HCZR, will provide a mix of housing uses based on findings 2 and 6.a. The Board specifically notes that while the 2.3 dwelling units/gross acre density on the PDP, reduced to 2.2 dwelling units/gross acre by the Board as a condition of this decision, does not require the provision of MIHU as part of the housing mix, the

Petitioners as a commitment of the Petition and PDP are providing 50 MIHU, and are accepting as a condition of the PDP approval the commitment to provide an additional 50 MIHU for seniors.

j. While public rail transit is not available, the proposed PDP, pursuant to Section 127D.7.j. of the HCZR, enables the provision of other public transit facilities and routes integrated into the development based on findings 2 and 6.c.

k. The PDP, pursuant to Section 127D.7.k. of the HCZR, proposes an intensity and scale of land use, as determined by proposed densities, FAR limits, and other requirements, that is appropriate in relation to the environmental constraints of the site, and the character of existing and planned development in the vicinity of the site based on findings 2 through 6. The Board notes that this area, in which the project is located, includes Westvaco and the Cherry Tree shopping center adjacent to the subject property, Johns Hopkins APL and the Montpelier Research Park, including the Bell Atlantic building, across Johns Hopkins Road, the three school sites adjacent to the property and the existence of the new County fire and police facilities in Fulton. The Board notes that the PDP proposes lot widths along the edges of the development similar to the adjacent residential areas, and that the Employment land use areas are proposed to be located away from these existing residential areas and more proximate to the above-mentioned non-residential uses. The Board also notes that the PDP as modified by the Board will provide 52 fewer dwelling units than the original proposal, and 407 fewer units than would have been permitted as a maximum under the MXD Regulations.

l. The PDP, pursuant to Section 127D.7.l. of the HCZR, proposes development that will be compatible with existing and planned vicinal land uses based on findings 2 through 6. In particular, the Board finds that the Petitioners, pursuant to Section 127D.7.l.(1) through (7), has

utilized the methods provided in Section 127D.7.1.(1), (2), (3), (4), (5), (6) and (7) to ensure the proper relationship between the MXD and surrounding uses as indicated in the testimony of the Petitioners mentioned in findings 2.h. through 2.k., testimony that the Board accepts, that the PDP :

1. Protects and enhances natural features on its boundary to provide a natural edge to the development through the location of Open Space land use at several locations at the edge of the subject property;
2. Provides, through its Open Space land use areas, buffering and transition between the subject property and adjacent land use areas when appropriate, and provides a connection to Open Space land use areas on adjoining land when possible;
3. Provides, through MD 216, US 29 and Johns Hopkins Road, a separation between PDP and vicinal uses, and provides, through its internal road systems, including the location and configuration of Sanner Road, separation between development areas within the PDP;
4. Establishes, through its landscape plan, landscape design concepts applicable to the edges of the subject property;
5. Establishes, through the 50 foot buffer area, with the buffering and berming, and the provision of larger lots on the edges of the subject property, set back requirements, accompanied by landscape design standards along the edges where different residential uses meet;
6. Controls the size of buildings on the edges of the MXD District through the limit on the height of buildings on the PDP; and

7. Provides, through the land uses proposed at its edges, a transition in land uses, such that the uses on the edges of the project are similar to the adjacent land uses outside the development.

The Board notes the provision of Employment land use areas adjoining the Cherry Tree shopping center, the Westvaco property, and along US 29 and Johns Hopkins Road, are appropriate to and compatible with the adjoining and surrounding areas. The Board notes that although addressed by the Petitioners, the specific methods mentioned in Section 127D.7.1.(4), (5), and (6) of the HCZR, for ensuring development compatibility, may also be addressed by the developer and evaluated by the Planning Board and DPZ at the CSP stage of the MXD development plan process.

m. The PDP's open space network pursuant to Section 127D.7.m.(1) through (4) of the HCZR will connect to existing and planned open space adjoining the development, protect major environmental features such as large forest stands or stream valleys, provide adequate useable land in appropriate locations for parks or recreational facilities, and will provide appropriate sites for needed public facilities based on findings 2 and 6.; and

n. The PDP, pursuant to Section 127D.7.n. of the HCZR, will provide housing and jobs within pedestrian access of each other based on findings 2, 3 and 6.

CONCLUSIONS OF LAW

1. The proposed PDP, as modified by the Board-generated modifications and conditions, together with all of the Petitioners' proffers, commitments, and accepted conditions, meets all of the minimum requirements of Section 127C of the HCZR, including requirements as to public water and sewer service, minimum area of the PDP, proportion of land uses, permitted uses, residential density, requirement for Employment land uses, requirements for Open Space land uses, bulk regulations, and other requirements. The Board makes the conclusions of law in this decision based on its own findings and on the evaluation, findings, and conclusions of the DPZ with respect to the criteria of Section 127C and D of the HCZR.

2. The above-described PDP has met all of the criteria for approval of a PDP contained in Section 127D.7. of the HCZR, as specified in the above findings, subject to the Board's conditions enumerated below.

3. The Board, based on the above-described PDP's satisfaction of the several criteria for approval as contained in the HCZR, concludes that the proposed PDP, as modified by the Board-generated modifications, which were accepted by the Petitioners, shall be approved subject to the conditions initiated and/or accepted by the Petitioners in the hearings on this matter, and the conditions imposed by the Board in its findings and conclusions in this decision, including but not limited to the following:

a. That the number of residential dwelling units approved with this PDP approval shall be 1116 dwelling units, 485 of which shall be Single-Family Detached Units, 395 of which shall be Single-Family Attached Units, and 236 of which shall be Apartment Units;

b. That the Petitioners shall comply with the phasing and staging requirements of

this decision and the Revised Phasing and Staging Plan submitted to the Board on September 25, 2000, including Notes 1 and 2 on such Plan;

c. That the residential lots to be located along the western edge of the project where it borders the Flamewood development shall each be at least 20,000 square feet in area as shown on Petitioners' Exhibit 4, and lots abutting existing residential communities shall have a minimum lot size of 20,000 square feet and shall have minimum lot widths of 120 feet, except for corner lots or pie-shaped lots whose rear widths shall exceed 120 feet adjacent to all existing residential neighborhood lots;

d. That the project shall be developed according to the Traditional Neighborhood Design as proffered by the Petitioners;

e. That the Petitioners shall implement the Traffic Demand Management Plan as outlined in Petitioners' Exhibit 55;

f. That the Petitioners shall be required to plant over 20,000 trees as part of its compliance with its overall landscaping and forest conservation requirements as proffered in its petition and testimony before the Board, and will provide the 50 foot open space buffer with the landscaping, planting of trees and berming as proffered in the petition, testimony before the Board and/or in Petitioners' Exhibit 114C;

g. That the Petitioners shall provide sheltered bus stops in the Focal Point and the Workplace District that can be utilized by public transit providers;

h. That the Petitioners shall comply with the State's new storm water management techniques;

i. That the Petitioners shall provide regular 50 Moderate Income Housing Units

and 50 Moderate Income Housing Units for Senior Citizens, and all 100 of these MIHUs shall be exempt from the annual phasing/allocation requirements per Note 1 of the Revised Phasing and Staging Plan;

j. That any unused allocations as provided in the Revised Phasing and Staging Plan may be used in later years;

k. That the Petitioners will cooperate with the County and affected property owners in the location of Sanner Road through the project;

l. That the Petitioners shall establish the Landscape Design Standards, Architectural Standards, and Community Standards as proffered in the petition and testimony before the Board, implemented by covenants and the code book to be enforced by the Master Association;

m. That Employment uses permitted only in the M-1 Zoning District shall not be permitted in the project, but POR and B-1 uses shall be permitted in the project per Petitioners' Exhibit 78;

n. That Petitioners would not propose development of the Price and Wessel properties at a residential density greater than 2.3 dwelling units per acre if they ever filed a petition for approval of an MXD PDP for those properties;

o. That there will be no strip shopping center permitted in the project;

p. That there will be a maximum of one gasoline service station/car wash permitted in the project;

q. That there will be no stand-alone commercial communication towers permitted in the project;

r. That homeowners in the Flamewood, Mooresfield, Hopkins Meade, and greater Beaufort Park developments shall be allowed to join the project's homeowners association recreational facilities under precisely the same terms as the project's residents, except that the developer or the homeowners association could require that a membership be sold back upon the sale of an off-site home to a new owner if there was not enough capacity to satisfy project residents;

s. That the Petitioners shall make no road connection, including access points at Johns Hopkins Road or MD 216 unless mandated by the County or State;

t. That the Petitioners shall design the Focal Point in a format similar to the town square concept in Kentlands, which would include retail, employment uses and amenities, as proffered in the petition and testimony before the Board, and in connection with which the Petitioners shall provide space for a storefront library, swimming facilities, tennis courts, multi-purpose courts, picnic facilities, tot lots, and/or other civic structures;

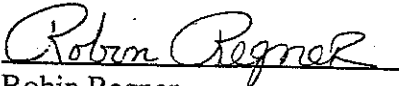
u. That the Petitioners shall develop the houses and commercial buildings in the various areas of the project, in terms of houses or buildings facing the street, setbacks of houses from roads, height requirements, as proffered in the petition and testimony before the Board, as summarized in finding 2; and

v. That the Petitioners shall front end the proffered intersection improvements at US 29 and Johns Hopkins Road, if necessary, should the interchange not be constructed when needed pursuant to the CSP process.

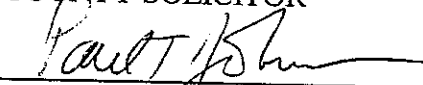
For the foregoing reasons, the Zoning Board of Howard County, Maryland, on this 29th day of December, 2000 hereby GRANTS the Petitioners' request for approval of the PDP and

Criteria as described herein, for the approximately 507.9 acre subject property located in the R-R-MXD-3 Zoning District, subject to the conditions as provided herein.

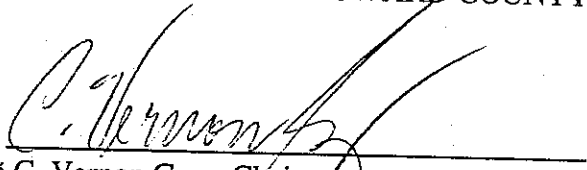
ATTEST:


Robin Regner
Administrative Assistant


PREPARED BY HOWARD
COUNTY OFFICE OF LAW
BARBARA M. COOK
COUNTY SOLICITOR


Paul T. Johnson
Deputy County Solicitor

ZONING BOARD OF HOWARD COUNTY


* C. Vernon Gray, Chairperson


* Mary C. Lorusung, Vice-Chairperson


* Guy Guzzone

Dissent-See attached opinion
Allan H. Kittleman

Dissent-See attached opinion
* Christopher J. Merdon

THE ABOVE SIGNED BOARD MEMBER
HEREBY CERTIFIES THAT HE OR SHE HAS
LISTENED TO A RECORDING OF ANY PORTIONS
OF THE HEARING FROM WHICH THEY WERE
ABSENT AND HAVE REVIEWED THE RELATED
EVIDENCE OF RECORD, IF ANY, PRIOR TO
PARTICIPATION IN THIS DECISION.

Dissent to the Decision and Order for G&R Maple Lawn, Inc.

This Petition holds the distinction of being the longest Zoning Board case in the history of Howard County. The Zoning Board spent over one year receiving testimony and deliberating on the decision with regard to this case. Although some have argued that the length of the process demonstrated a flaw in our system, we believe that it is more important to ensure that every person has an opportunity to present their position than it is to reach a speedy decision. Even though we do not support the final decision of the Zoning Board, we are pleased that each party was provided an opportunity to be fully heard.

Section 127.D.7 requires that the Preliminary Development Plan [PDP] satisfy all of the criteria listed in that section. While we acknowledge that most of the criteria have been met by the PDP, we cannot agree that the PDP, with the minor modifications imposed by the majority on the Zoning Board, satisfies all of the criteria.

Our objections to the Decision and Order are basically twofold. First, we strongly believe that reducing the housing density would have made the development more compatible with the surrounding communities. Section 127.D.7.1 specifically provides that "[t]he development will be compatible with existing and planned vicinal land uses."

The underlying zoning for Maple Lawn Farms is rural residential. Even though there is a mixed-use overlay, we feel that the underlying zoning demonstrates the need to reduce the density to a figure closer to the nearby existing residences. The majority's decision to reduce the density from 2.3 units per acre to 2.2 units is not sufficient to make the density compatible with the surrounding communities.

We proposed setting the housing density at 2.0 units per acre. Reducing the ratio to 2.0 units would have resulted in a 152-unit reduction in the entire development. We contend that such a reduction would have improved the compatibility without causing irreparable harm to the economic feasibility of the development.

Second, we just as strongly believe that increasing the amount of employment acreage would have enabled the PDP to satisfy the criteria found within the mixed-use regulations. The regulations require that the PDP "... foster orderly growth, integration of uses, appropriate fiscal impact, and development consistent with the purposes of the MXD District." Section 127.D.7. The regulations further require that "[t]he relative

proportions of residential, employment, and open space uses will be appropriate to the area surrounding the MXD District." Section 127.D.7.f.

The PDP includes only the minimum amount of employment land allowed by the zoning regulations [15%]. We proposed increasing the employment land from 77.1 acres to 119.8 acres. This would have increased the employment land to 23.6% of the total gross acres of the development.*

Increasing the employment land would have provided a much better fiscal impact for the surrounding community and Howard County. The commercial enterprises that would have been included in the increased acreage would have provided greater tax revenues while requiring fewer services than the additional residential units.

Maple Lawn Farms is very close to Route 29. The eastern portion of the development abuts commercial property that is located on Route 29. Consequently, increasing the employment land would provide a better proportion of employment land as required by the criteria.

Finally, increasing the employment land would foster orderly growth in Howard County. There is a tremendous need for commercially zoned property. By allowing the Petitioner to proceed with only the minimum amount of employment land, we are losing a golden opportunity to improve our economic development. This modification would foster orderly growth by providing more jobs for County residents, as well as, producing higher tax revenues. Such a requirement would have been good for the Petitioner, the surrounding communities and the County.

The proposed development's impact on traffic was also a major concern. The MXD regulations require that the development "... be phased to conform to the phasing of road improvements specified in the General Plan (Chapter Eight: Phased Growth) that are needed to serve the proposed development, including improvements to road links, intersections and interchanges for both State and County roads." Section 127.D.7.b.

On page 229 of the 1990 General Plan, it reads "[a] combination of techniques is needed to address the timing and sequencing of development in a comprehensive and

* To alleviate fears that the increased employment land would overwhelm the existing residential communities, we would have included a lower Floor Area Ratio: .25 instead of .35. Even with the lower F.A.R., the employment space would have been increased by 130,000 square feet.

permanent way. It is imperative that new areas not be permitted to develop prematurely in advance of support services."

There was considerable testimony on whether improvements to Route 216 from Route 29 to Route 95 were to be considered when evaluating the PDP. With our support, the Zoning Board concluded that such an analysis was required.

Although we are unable to fully support the majority's decision, we are pleased to have played a role in ensuring that the housing units are not allocated until the funds for the relocation of Route 216 to Route 95 are included in the current year capital budget. Such a requirement is essential to the welfare of the existing residents.

We want to close by asserting that it was never our intent to stop the development of Maple Lawn Farms. We have always accepted that the land was zoned with a mixed-use overlay by a prior Zoning Board and we in no way sought to reverse that decision. In our view, the PDP as submitted by the Petitioner, along with the revisions made by the majority of the Zoning Board, simply does not satisfy the criteria as set forth in the zoning regulations. It is for this reason that we respectfully dissent.



Allan H. Kittleman
Councilman, District 5



Christopher J. Merdon
Councilman, District 1

12/29/2000

Date